

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3972 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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KALOL NAGARPALIKA

Versus

PIR BHADIYADRI BHAGOL, KALOL & ORS

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Appearance:

Shri Prashant G. Desai, Advocate, for Shri G.M.  
Desai, Advocate, for the Petitioner

Shri V.C. Desai, Advocate, for Respondents Nos. 1  
and 2

Shri T.H. Sompura, Assistant Government Pleader,  
for Respondents Nos. 3 and 4

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/07/96

ORAL JUDGEMENT

The attitude of "Heads I win; tails you lose"

deserves to be condemned even if it is shown by a private individual. This petition demonstrates how a local authority has adopted such an attitude. To top it all, that local authority has an audacity to approach this Court under articles 226 and 227 of the Constitution of India questioning the correctness of the just and proper order passed by the Secretary (Appeals) (respondent No. 4 herein) on behalf of the State Government (respondent No. 3 herein) on 12th December 1983.

2. The facts giving rise to this petition move in a narrow compass. The petitioner is the Municipality at Kalol. It was in occupation and possession of one parcel of land bearing survey No. 499 admeasuring 6 acres 26 gunthas. Some 399.7 square yards of its land was contiguous to one parcel of land bearing survey No. 500. The petitioner wanted it to be amalgamated with survey No. 500. It also wanted to amalgamate their land in Blocks Nos. 274 and 275 of survey No. 505. The land sought to be amalgamated from survey No. 500 in survey No. 499 belonged to respondents Nos. 1 and 2. It was therefore agreed that exchange may be made with the land belonging to the petitioner and that belonging to respondents Nos. 1 and 2. Thereupon, by his order passed on 22nd August 1965, the Collector of Mehsana granted permission of such exchange on certain terms and conditions. Its copy is at Annexure A to this petition. It appears that pursuant to that order the petitioner took possession of the land came to it under the order at Annexure A to this petition. It however did not hand over to respondents Nos. 1 and 2 the possession of the land to be given in exchange. Respondents Nos. 1 and 2 thereupon approached the Collector of Mehsana with a grievance that the petitioner herein did not comply with the order at Annexure A to this petition. By his order passed on 6th September 1983, the Collector of Mehsana rejected the application made by respondents Nos. 1 and 2 on 13th September 1982. Its copy is at Annexure B to this petition. That aggrieved respondents Nos. 1 and 2 herein. They carried the matter in revision before respondent No. 4 acting on behalf of respondent No. 3 under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief). By his order passed on 12th December 1983 on behalf of respondent No. 3, respondent No. 4 accepted the revisional application made by respondents Nos. 1 and 2 herein and directed the petitioner herein to hand over possession of 399.7 square yards of land from survey No. 499 to them in terms of the order at Annexure A to this petition. Its copy is at Annexure C to this petition. Strangely enough, the petitioner was aggrieved by the order at Annexure C to

this petition. It has therefore approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning its correctness.

3. At one stage the petitioner-Municipality put forward a case that possession of the land in terms of the order at Annexure A to this petition was handed over to respondents Nos. 1 and 2. The stand of the petitioner-Municipality is very much evident from the order of the Collector of Mehsana at Annexure B to this petition. It however transpires from the revisional order at Annexure C to this petition that, in response to one communication of 22nd September 1982 from the Collector of Mehsana, the petitioner-Municipality, by its communication of 22nd October 1982, clarified that, after the possession of the land in terms of the order at Annexure A to this petition was received from respondents Nos. 1 and 2 herein, the said land was reserved by the petitioner-Municipality to be handed over to the Government for the office of the Industries Inspector, and as such the petitioner did not hand over possession of the required land to respondents Nos. 1 and 2 in terms of the order at Annexure A to this petition. It thus becomes clear that the stand taken by the petitioner-Municipality before the Collector of Mehsana as transpiring from the order at Annexure B to this petition was certainly not only false but highly improper. It could not have taken such stand before the Collector of Mehsana. It is strange and surprising that the Collector of Mehsana recorded such stand of the petitioner-Municipality before him in the wake of the communication of 22nd October 1982 received by him from the petitioner-Municipality in response to his communication of 22nd September 1982. I think the Collector of Mehsana could not have lost sight of this aspect of the case while disposing of the application made by respondents Nos. 1 and 2 herein by his order at Annexure B to this petition. It appears that the order at Annexure B to this petition was passed on some extraneous considerations keeping in mind the aforesaid communication of 22nd October 1982 from the petitioner-Municipality to the Collector of Mehsana in response to his communication of 22nd September 1982. Respondent No. 4 acting on behalf of respondent No. 3 was therefore justified, in exercise of the powers under sec. 211 of the Code, in interfering with the aforesaid order of the Collector of Mehsana at Annexure B to this petition.

4. Learned Advocate Shri Desai for the petitioner has submitted that respondent No. 4 on behalf of

respondent No. 3 could not have ordered handing over of possession to respondents Nos. 1 and 2 by the impugned order at Annexure C to this petition. It may be noted that the order at Annexure A to this petition was passed by no less an authority than the Collector of Mehsana. In fact, it was his duty to enforce his order when a grievance to him was made that it was not enforced. If he has not chosen to do so, respondent No. 4 acting on behalf of respondent No. 3 was justified in enforcing the order at Annexure A to this petition passed by his subordinate officer, namely, the Collector of Mehsana. Section 211 of the Code is wide enough to empower the revisional authority to order enforcement and implementation of an order passed by a subordinate revenue officer.

5. Learned Advocate Shri Desai for the petitioner has then urged that the application made by respondents Nos. 1 and 2 to the Collector of Mehsana for enforcement and implementation of the order at Annexure A to this petition was suffering from the vice of inordinate delay on their part, and as such it was rightly not entertained by the Collector of Mehsana. I find no merit or substance in this submission. The reason therefor is quite simple. In the first place, by his order at Annexure B to this petition, the Collector of Mehsana has not rejected the application made by respondents Nos. 1 and 2 herein on 13th September 1982 for enforcement and implementation of the order at Annexure A to this petition on the ground of inordinate delay on their part. Secondly, the petitioner-Municipality is a local authority constituted under the Gujarat Municipalities Act, 1963. It would not lie in its mouth to resist the just claim of its inhabitants on such technical pleas in view of the binding ruling of the Supreme Court in the case of *The Madras Port Trust v. Hymanshu International* reported in AIR 1979 SC 1144. It has been held therein:

"The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens."

The aforesaid observations found in the aforesaid binding

ruling of the Supreme Court provide a complete answer to the aforesaid submission urged before me by learned Advocate Shri Desai for the petitioner-Municipality.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure C to this petition calls for no interference by this Court in this petition under articles 226 and 227 of the Constitution of India. This petition therefore deserves to be rejected. In view of the dishonest claim made by the petitioner-Municipality, it would be in the interests of justice to direct it to pay costs of this petition to respondents Nos. 1 and 2 and to pay to them 'compensatory costs' in the sum of Rs. 5000/-. The petitioner-Municipality also deserves to be directed to implement forthwith the order at Annexure C to this petition.

6. In the result, this petition is rejected. The petitioner is directed to pay costs of this petition to respondents Nos. 1 and 2 in one set and to pay to them compensatory costs in the sum of Rs. 5000/-. The petitioner and respondents Nos. 3 and 4 shall bear their own costs. The petitioner is directed forthwith to enforce and implement the order at Annexure C to this petition. It should hand over possession of the land in terms of the order at Annexure A to this petition to respondents Nos. 1 and 2 on or before 14th August 1996. Rule is accordingly discharged. Direct service is permitted.

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